

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8527 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and Sd/-

Hon'ble MR.JUSTICE A.M.KAPADIA Sd/-

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements? Yes
2. To be referred to the Reporter or not? Yes - except :  
bracketed portion
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement? No
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? : NO  
No

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UNION OF INDIA

Versus

BACHU BADIA  
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Appearance:

MR JJ YAJNIK for Petitioners  
MR YV SHAH for Respondent No. 1  
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CORAM : MR.JUSTICE B.C.PATEL and  
MR.JUSTICE A.M.KAPADIA  
Date of decision: 02/09/1999

ORAL JUDGEMENT

(Per: B.C.Patel, J.)

Union of India (Railways) being aggrieved by the  
judgment delivered by the Central Administrative  
Tribunal, Ahmedabad Bench on 2.4.1998, has approached

this Court.

2. It is contended by learned advocates Mr.Yagnik and Mr.Sheth appearing for the Railways that the Tribunal has committed serious error in considering the case of the original petitioner as the application was barred by limitation. It is pointed out to us from the order that the case of the applicant, as set out in the application, was of oral termination with effect from 20.5.1985. The Tribunal was moved on 8.3.1989, after a period of about four years, along with an application for condonation of delay being M.A. No. 717 of 1989. The Tribunal has observed that, "The applicant has not furnished any satisfactory explanation for the long delay in filing this application challenging the termination order. The M.A. is rejected and consequently prayer (A) of para 7 regarding quashing of termination order is rejected." It is submitted that the Tribunal has come to the conclusion that the delay has not been properly explained and as a consequence of which the application was rejected, then it was not open for the Tribunal to proceed further with the matter.

3. Prima facie, the submissions are very attractive. Once the application for condonation of delay is rejected, there is no question of entertaining main application. In the instant case, the applicant was permitted to amend the application tendered before the Tribunal. Para (AA) inserted in the application after amendment reads as under:

"(AA) Alternatively be pleased to direct the respondents to absorb the applicant in service from the date of his junior's absorption in pursuant to section 25-H of the I.D.Act, 1947 and in pursuant to the Railway Board's absorption scheme."

4. The Tribunal, after rejecting the prayer as set out in para (A) of the prayer clause, proceeded further with the prayer mentioned in para (AA) reproduced hereinabove. It was pointed out to the Tribunal that the applicant was a retrenched workman and if there is a question of re-employment of retrenched workmen, then, it was incumbent on the employer to follow the procedure laid down in Section 25-H of the Industrial Disputes Act, 1947 and Rule 78 of the Industrial Disputes (Central) Rules, 1957.

[Section 25-H of the I.D.Act reads as under:

"25-H Re-employment of retrenched workmen- Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen who offer themselves for re-employment shall have preference over other persons."

Rule 78 of the I.D.(Central) Rules reads as under:

"78. Re-employment of retrenched workmen -(1) At least ten days before the date on which vacancies are to be filled, the employer shall arrange for the display on a notice board in a conspicuous place in the premises of the industrial establishment details of those vacancies and shall also give intimation of these vacancies by registered post to every one of all the retrenched workmen eligible to be considered therefor, to the address given by him at the time of retrenchment or at any time thereafter;

Provided that where the number of such vacancies is less than the number of retrenched workmen, it shall be sufficient if intimation is given by the employer individually to the senior-most retrenched workmen in the list referred to in Rule 77 the number of such senior-most workmen being double the number of such vacancies;

Provided further that where the vacancy is of a duration of less than one month, there shall be no obligation on the employer to send intimation of such vacancy to individual retrenched workmen;

Provided also that if a retrenched workman, without sufficient cause being shown in writing to the employer, does not offer himself for re-employment on the date or dates specified in the intimation sent to him by the employer under this sub-rule, the employer may not intimate to him the vacancies that may be filled on any subsequent occasion;

(2) Immediately after complying with the

provisions of sub-rule (1), the employer shall also inform the trade unions connected with the industrial establishment, of the number of vacancies to be filled and names of the retrenched workmen to whom intimation has been sent under that sub-rule;

Provided that the provisions of this sub-rule need not be complied with by the employer in any case where intimation is sent to every one of the workmen mentioned in the list prepared under Rule 77." ]

5. It is averred in the petition that juniors were re-employed and no opportunity was given to the original applicant. Section 25-H mandates the employer to give an opportunity to the retrenched employees. It is the duty of the employer to offer re-employment. The method of intimation is prescribed in Rule 78 referred to hereinabove. Admittedly, the retrenched workmen junior to the original applicant were re-employed in the instant case. No intimation about the vacancy was given by a registered post to the original applicant - the retrenched workman eligible to be considered- at the address given by him at the time of his retrenchment and was not re-employed.

6. The original application was of oral termination. However, subsequently, the application was amended. Looking to the facts and circumstances of the present case, the Tribunal thought it proper to entertain the application, and so far as prayer clause (A) is concerned, that prayer being not within the prescribed period, the Tribunal has not granted that prayer. So far as the prayer covered by clause (AA) of the prayer clause is concerned, as it is not disputed before us that the said prayer was within time, in our opinion, the Tribunal has rightly entertained the petition and it requires no interference by this Court. In an application which was not within the time stipulated, the objection ought to have been raised while seeking permission to amend the application. As no objection was raised and the applicant herein acquiesced in the order allowing the amendment, now it cannot be said that the Tribunal was not justified in entertaining the application. Hence, petition stands rejected. Rule is discharged with no order as to costs.

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